

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

BOSTON GAS COMPANY
d/b/a KEYSpan ENERGY
DELIVERY NEW ENGLAND

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D.T.E. 03-40

**SUPPLEMENT TO MOTION OF THE ATTORNEY GENERAL TO STRIKE
PORTIONS OF THE INITIAL BRIEF OF BOSTON GAS COMPANY**

On September 18, 2003, the Attorney General moved that the Department of Telecommunications and Energy (“Department”) strike portions of the initial brief (“Initial Brief”) of Boston Gas Company, D/B/A KeySpan Energy Delivery New England (“Company”) in this proceeding because they were not supported with record evidence. Upon further review, the Attorney General supplements his Motion by adding the following portions of the Company’s Initial Brief that the Department should also strike for the same reasons:

! The second sentence of the paragraph under the second bullet on page 6:

In fact, low pressure results from increased load on the system and is not related to leaks or leak repair.

! The penultimate sentence of footnote 47 on page 122:
However, the work performed by the Company’s regulatory counsel related to that internal investigation carried over and used in the present rate case and is not distinguishable as being applicable to an “abandoned” rate case.

The Company was specifically on notice of the Department’s requirements. The Department stated the following in the Company’s last rate case:

Given the longstanding and extensive efforts of the Company to introduce new evidence that were rejected by the Department, the Department is hard pressed to accept the Company's explanation that a "misunderstanding" could have resulted between Company counsel and staff about the use of extra record evidence in the preparation of the chart for the March 7, 1997 hearing. After granting the Attorney General's Motion to Strike Extra-Record Evidence and Testimony, sustaining the Attorney General's objection to admission of Exhibit BGC-297, and determining that the hearing on the Company's Motion would be restricted to legal and factual arguments that are derived from record evidence, the Department cannot accord any weight to the arguments put forth by the Company that rely on extra-record information.

Boston Gas Company, D.T.E. 96-50-C (Phase 1) at 11-13 (1997). In a previous case the Department also stated:

To the extent that any party argued a new position on brief that was unsupported by evidence taken in this proceeding, the Department may not accept those positions. To the extent that a party attempted to introduce new evidence on brief, that purported evidence is stricken from the record, in compliance with the Department's procedural rules, prior decisions, and the Ground Rules in this arbitration 220 C.M.R. 1.11(6), which provides, in pertinent part, Briefs not filed or served on or before the dates fixed therefor shall not be accepted for filing.... Requests for an extension of time in which to file briefs shall conform to the requirements of 220 C.M.R. 1.02(5) and shall be filed before the time fixed for filing such briefs.

Media One Telecom, Bell Atlantic, Greater Media Telephone, Inc. Interconnection Agreements, D.T.E. 99-42/43, 99-52 Page 18.

For these reasons, the Department should grant this Motion To Strike the above-listed portions of the Company's Initial Brief.

Respectfully submitted,

THOMAS REILLY
ATTORNEY GENERAL

By: _____
Edward G. Bohlen
Assistant Attorney General
200 Portland Street, 4th Floor

Dated: September 19, 2003

Boston, MA 02114

COMMONWEALTH OF MASSACHUSETTS
before the
DEPARTMENT OF PUBLIC UTILITIES

BOSTON GAS COMPANY
d/b/a KEYSPAN ENERGY
DELIVERY NEW ENGLAND

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D.P.U. 03-40

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding. Dated at Boston this 19th day of September, 2003.

Edward G. Bohlen
Assistant Attorney General
Regulated Industries Division
Public Protection Bureau
200 Portland Street
Boston, MA 02114
(617) 727-2200

September 19, 2003

Mary L Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2d Fl.
Boston, MA

Re: KeySpan, D.T.E. 03-40

Dear Secretary Cottrell:

Enclosed for filing please find the **Supplement To The Motion of the Attorney General To Strike Portions Of The Initial Brief Of Boston Gas Company** in the above-referenced proceeding, with a Certificate of Service. Thank you.

Sincerely,

Edward G. Bohlen
Assistant Attorney General

Enclosures